

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOROUGH OF UPPER SADDLE RIVER,
KAREN MILLER, ROY OSTROM, MARIA FLORIO,
MARK RUFFOLO AND LINDA MCDONALD,

07-CV-0109 (CLB)(MDF)

Plaintiffs,

NOTICE OF MOTION

v.

VILLAGE OF AIRMONT, ROCKLAND COUNTY
SEWER DISTRICT # 1,

Defendants.
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Defendant, VILLAGE OF AIRMONT, through its attorneys, HODGES WALSH & SLATER, LLP, hereby gives notice of its motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6) and 56(b), to be submitted to the Honorable Mark D. Fox on April 17, 2007 at the federal Courthouse located at 300 Quarropas Street, White Plains, New York 10601 on April 17, 2007.

Pursuant to Judge Fox's briefing order, opposition is due May 1, 2007 and Defendant's Reply is due May 8, 2007, with Oral Argument to be held on May 15, 2007.

Dated: White Plains, New York
April 17, 2007

Yours, etc.,

HODGES WALSH & SLATER, LLP

By: Paul E. Svensson

Paul E. Svensson

Attorneys for Defendant

VILLAGE OF AIRMONT

75 South Broadway

White Plains, New York 10601

(914) 304-4333

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOROUGH OF UPPER SADDLE RIVER,
KAREN MILLER, ROY OSTROM, MARIA FLORIO,
MARK RUFFOLO AND LINDA MCDONALD,

07-CV-0109 (CLB)(MDF)

Plaintiffs,

AFFIRMATION

v.

VILLAGE OF AIRMONT, ROCKLAND COUNTY
SEWER DISTRICT # 1,

Defendants.
-----X

Paul E. Svensson, an attorney duly admitted to practice in the United States
District Court for the Southern District of New York, hereby affirms the following:

1. I am a member of HODGES WALSH & SLATER, LLP, attorneys for the
Defendant, VILLAGE OF AIRMONT.

2. A substitution of attorney form is annexed hereto as EXHIBIT A,
authorizing HODGES WALSH & SLATER, LLP to assume defense of this matter from
BOEGGEMAN GEORGE HODGES & CORDE, P.C., and the Court is respectfully
requested to so order this substitution.

3. This Affirmation, the Affidavit of JOHN C. LAYNE, Mayor of the
VILLAGE OF AIRMONT, New York, accompanying Exhibits, Statement of Facts and
Memorandum of Law are submitted in support of the instant motion for an Order
granting Defendant VILLAGE OF AIRMONT summary judgment and dismissing
plaintiffs' Amended Complaint as asserted against the VILLAGE OF AIRMONT.

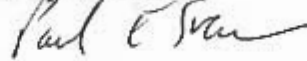
4. The Court is respectfully referred to the annexed Affidavit of JOHN C. LAYNE, Statement of Facts, Exhibits and Memorandum of Law for argument in this matter.

5. Based upon these submissions, it is respectfully submitted that plaintiffs cannot demonstrate a triable issue of fact whether the facilities complained of, and the discharge alleged, are within the control of the VILLAGE OF AIRMONT.

6. As such, it is respectfully requested that the complaint as asserted against the VILLAGE OF AIRMONT be dismissed in its entirety.

Dated: White Plains, New York
April 17, 2007

Respectfully submitted,



Paul E. Svensson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOROUGH OF UPPER SADDLE RIVER
Plaintiff,

- against -

VILLAGE OF AIRMONT, ROCKLAND COUNTY
SEWER DISTRICT #1,

Defendants.


CONSENT TO
CHANGE ATTORNEY

07 Civ. 0109 (WP4)(MDF)

IT IS HEREBY CONSENTED THAT HODGES WALSH & SLATER, LLP 75

South Broadway, White Plains, New York 10601, be substituted as attorneys of record for the undersigned party(ies) in the above entitled action in the place of the undersigned attorneys as of the date hereof.

Dated: White Plains, New York
April 9, 2007


Joel Grossbarth
Village Attorney, Village of Airmont

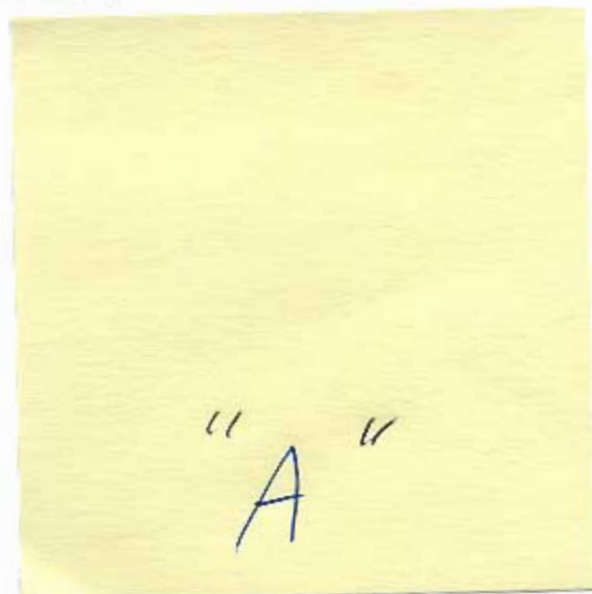
BOEGGEMAN GEORGE
HODGES & CORDE

By: _____

ACKNOWLEDGMENT INSIDE NEW YORK

STATE OF NEW YORK
COUNTY OF Orange SS:

On the 9th of April in the year 2007 before me, the undersigned, personally appeared Joel Grossbarth, Esq., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOROUGH OF UPPER SADDLE RIVER,
KAREN MILLER, ROY OSTROM, MARIA FLORIO,
MARK RUFFOLO AND LINDA MCDONALD,

07-CV-0109 (CLB)(MDF)

Plaintiffs,

STATEMENT OF FACTS

v.

VILLAGE OF AIRMONT, ROCKLAND COUNTY
SEWER DISTRICT # 1,

Defendants.
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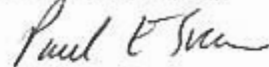
Defendant, VILLAGE OF AIRMONT, by its attorneys HODGES WALSH &
SLATER, LLP, hereby submits the following Statement of Material Facts.

1. ROCKLAND COUNTY SEWER DISTRICT #1 is a Rockland County agency. (See Plaintiffs' Amended Complaint, par. 16).
2. Defendant, ROCKLAND COUNTY SEWER DISTRICT #1 is responsible for operating and maintaining the wastewater collection and treatment system, which is the subject of their Amended Complaint. (See Plaintiffs' Amended Complaint, par. 16).
3. The alleged discharge arises from the ROCKLAND COUNTY SEWER DISTRICT # 1 system of collection, treatment and discharge piping. (See Plaintiffs' Amended Complaint, par. 22-3).
4. The VILLAGE OF AIRMONT has no authority, or responsibility, to approve sewer connections nor does it not own, operate, manage, direct or otherwise supervise ROCKLAND COUNTY SEWER DISTRICT # 1. (See Affidavit of John C. Layne, annexed hereto as EXHIBIT B).

5. The VILLAGE OF AIRMONT neither owns nor operates a wastewater collection and treatment system or any system that discharges polluted materials as described by plaintiffs into the waters of the Saddle River. (See Layne Affidavit).

Dated: White Plains, New York
April 17, 2007

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul E. Svensson", written over a horizontal line.

Paul E. Svensson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOROUGH OF UPPER SADDLE RIVER,
KAREN MILLER, ROY OSTROM, MARIA FLORIO,
MARK RUFFOLO AND LINDA MCDONALD,

07-CV-0109 (CLB)(MDF)

Plaintiffs,

**MEMORANDUM
OF LAW**

v.

VILLAGE OF AIRMONT, ROCKLAND COUNTY
SEWER DISTRICT # 1,

Defendants.

-----X
Preliminary Statement

It is respectfully submitted that the claims against the VILLAGE OF AIRMONT must be dismissed as a matter of law because it did not have any ownership, control or supervisory interest in the ROCKLAND COUNTY SEWER DISTRICT #1, which plaintiffs have described as the sole source of improper discharge.

Standard for Review

A court may grant summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Hayes v. New York City Department of Corrections, 84 F.3d 614, 619 (2d Cir. 1997).

The party moving for summary judgment bears the burden of demonstrating that there is "no genuine issue of material fact" and that there is sufficient evidence to support the non-moving party's case. The burden then shifts to the non-moving party to produce sufficient evidence to establish that there exists a genuine issue of material fact. Celotex v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 2552 (1986).

The non-moving party must make a showing sufficient to establish the existence of the elements essential to his case and on which he will bear the burden of proof at trial.

Id.

Argument

THE VILLAGE OF AIRMONT IS NOT LIABLE FOR AN ALLEGED DISCHARGE FROM A FACILITY IT DID NOT OWN, CONTROL OR OPERATE

Plaintiffs cannot demonstrate that the VILLAGE OF AIRMONT had ownership, operational authority or control over the wastewater collection and treatment system described in their Complaint and, as such, cannot fairly state a claim against the VILLAGE OF AIRMONT for the alleged discharge of pollutants. See generally, Hudson River Fisherman's Ass'n v. Acuri, 862 F.Supp. 73, 76 (S.D.N.Y. 1994).

Plaintiffs properly allege that Defendant, ROCKLAND COUNTY SEWER DISTRICT #1 is a Rockland County agency, responsible for operating and maintaining the wastewater collection and treatment system, which is the subject of their Amended Complaint.

Plaintiffs also allege that the VILLAGE OF AIRMONT owns, controls or operates the subject wastewater collection and treatment facility. Plaintiffs lack any factual basis for this allegation.

First of all, plaintiffs acknowledge that the alleged discharge arises from the ROCKLAND COUNTY SEWER DISTRICT # 1 system of collection, treatment and discharge piping. Second, plaintiffs' allege that the ROCKLAND COUNTY SEWER DISTRICT #1 is a Rockland County agency. Third, this Court is requested to take

judicial notice that Rockland County is a completely distinct municipal entity from the VILLAGE OF AIRMONT.

Moreover, Mayor John C. Layne, averred that the VILLAGE OF AIRMONT has no authority, or responsibility, to approve sewer connections as it does not own, operate, manage, direct or otherwise supervise ROCKLAND COUNTY SEWER DISTRICT # 1.

As such, the VILLAGE OF AIRMONT cannot own, control or operate a county agency and plaintiffs' allegations must be dismissed.

In addition, plaintiffs allege that "[t]he Village's continued approval of sewer connections and failure to ensure compliance aids and abets the Rockland County Sewer District's continued violations of the CWA" (See par. 15).

Plaintiffs lack any factual or statutory basis to demonstrate that the VILLAGE OF AIRMONT has a duty to ensure compliance of the ROCKLAND COUNTY SEWER DISTRICT # 1, or its parent ROCKLAND COUNTY, with the Clean Water Act.

Finally, plaintiffs' unsubstantiated suggestion that the VILLAGE OF AIRMONT is involved in some sort of criminal conspiracy is absurd.

The facts and law are clear. The VILLAGE OF AIRMONT lacks control over ROCKLAND COUNTY SEWER DISTRICT # 1. In the absence of control, it is unreasonable to assign liability for alleged improper discharge into navigable waters.

The only connection that the VILLAGE OF AIRMONT has to this matter is geographic. It is undisputed that Saddle River travels through the VILLAGE OF AIRMONT on its way to UPPER SADDLE RIVER. As such, the two municipalities share concerns over the environmental safety of the water and the VILLAGE OF AIRMONT has a right to institute a similar cause of action should it deem appropriate.

Notwithstanding, it would be equally ridiculous as it is here if the VILLAGE OF AIRMONT were to include UPPER SADDLE RIVER as a defendant in that action.

Conclusion

Whereas the facility complained of by plaintiffs, and the alleged discharge, are outside the control of the VILLAGE OF AIRMONT and exclusively within the scope of facilities owned, operated, controlled and managed by the ROCKLAND COUNTY SEWER DISTRICT # 1, it is respectfully requested that the Complaint against the VILLAGE OF AIRMONT be dismissed in its entirety.

Dated: White Plains, New York
April 17, 2007

Respectfully submitted,



Paul E. Svensson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOROUGH OF UPPER SADDLE RIVER,

Plaintiff,

-against-

VILLAGE OF AIRMONT, ROCKLAND
COUNTY SEWER DISTRICT #1,

Defendants.
-----X

Docket No.: 7:06-cv-07085-CM

**AFFIDAVIT OF
JOHN C. LAYNE**

JOHN C. LAYNE, Mayor of Village of Airmont, hereby deposes and states:

I am the Mayor of the Village of Airmont, New York, and as such I am fully familiar with the operations and functions of the Village of Airmont and its public facilities.

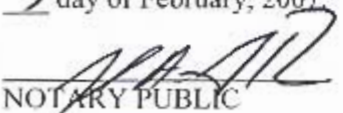
I have read the Complaint filed by plaintiff and am familiar with the claims asserted therein.

The Village of Airmont neither owns nor operates the wastewater collection and treatment system described in plaintiff's Complaint nor has the Village discharged water pollution into the Saddle River as described therein.

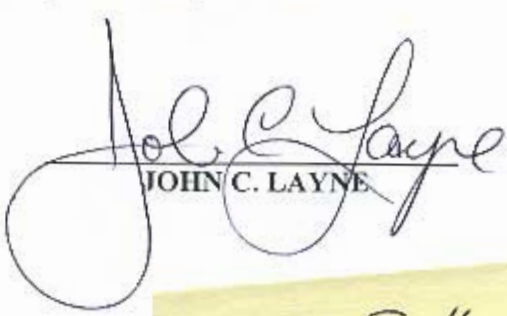
The facility described by plaintiff in its complaint with improperly discharging in violation of its SPDES permit is owned, operated, managed, directed, supervised and controlled by Rockland County Sewer District #1.

The Village of Airmont does not own, operate, manage, direct, or otherwise supervise Rockland County Sewer District #1, which is a separate entity not under the control of the Village of Airmont, its staff or employees.

Sworn to before me this
2 day of February, 2007


NOTARY PUBLIC

JOEL A. GROSSBARTH
Notary Public-state Of New York
No. 02GR5027196
Qualified In Rockland County
My Commission Expires May 02, 2010


JOHN C. LAYNE

"B"